

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

**SACO AEI Polymers
3220 Crocker Avenue
Sheboygan, WI 53081**

Respondent

Docket Number TSCA-HQ-2019-5005

**CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Notice of Treatment of Confidential Business Information

Portions of the attached Complaint require use of information which Respondent submitted to the United States Environmental Protection Agency (EPA) as Confidential Business Information (CBI). Information in the Complaint constituting or based on CBI has been deleted as indicated by the following: "(CBI deleted)". The original Complaint containing CBI is filed with the Headquarters Hearing Clerk. It will be treated as confidential unless the Respondent waives confidentiality thereto or EPA releases the information in accordance with 40 C.F.R.

Part 2.

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**CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Complainant is Gregory Sullivan, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA), who has been duly delegated the authority to institute this action.

The Respondent is SACO AEI Polymers (SACO AEI or Respondent), located at 3220 Crocker Avenue, Sheboygan, WI 53081.

On or about December 21, 2018, EPA sent a TSCA Information Request Letter to Respondent requesting information pertaining to compliance with sections 4, 5, 8, 12, and 13 of TSCA. As a result of the information received in response to the TSCA Information Request Letter and follow-up actions, Complainant alleges that Respondent has violated section 8(a) of TSCA, 15 U.S.C. §2607(a) as set forth below.

COUNT I

1. Respondent is a corporation located at 3220 Crocker Avenue, Sheboygan, WI 53081.
2. Respondent is a "person" as defined in 40 C.F.R. § 710.3 and is subject to TSCA and the regulations promulgated thereunder.
3. Respondent "manufactures" (imports) a "chemical substance," as defined respectively by section 3(9) of TSCA, 15 U.S.C. § 2602 (9) and section 3(2)(A) of TSCA, 15 U.S.C. § 2602 (2)(A).
4. The Chemical Data Reporting Rule (CDR), 40 C.F.R. Part 711, is a rule promulgated under the authority of section 8(a) of TSCA, 15 U.S.C. § 2607(a).
5. Pursuant to 40 C.F.R. § 711.8(a)(2), except as provided in §§ 711.9 and 711.10, any person who manufactured (including imported) for commercial purposes 25,000 lb. (11,340 kg.) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year (e.g., for the 2016 submission period, 2012, 2013, 2014, and 2015) is subject to reporting.

6. During the 2016 submission period, Respondent manufactured or imported 25,000 lbs. (11,340 kgs.) or more of the following reportable chemical substance and failed to submit a report (Form U) to EPA, including the required information pursuant to 40 C.F.R. § 711.15 by October 31, 2016. On or about May 30, 2019, Respondent filed a 2016 Form U to include this reportable chemical substance:

Chemical Abstracts Service Registration Number (CASRN): (CBI deleted).

7. A violation of the CDR violates section 15(1) of TSCA, 15 U.S.C. § 2614(1) and section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of TSCA § 15, 15 U.S.C. § 2614, in an amount not to exceed \$38,892 for each day of violation.

For purposes of determining the amount of a civil penalty to be assessed, section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in TSCA § 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), the EPA's *Enforcement Response Policy (ERP), Reporting and Recordkeeping Rules and Requirements, TSCA Sections 8, 12 and 13* (revised March 31, 1999 and effective June 1, 1999). The ERP was developed in

accordance with the *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations at 45 Fed. Reg. 59,770 (Sept. 10, 1980). The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to cases.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *TWENTY TWO THOUSAND FOUR HUNDRED AND SEVENTY NINE DOLLARS* (\$22,479) for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA § 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To request a hearing pursuant to 40 C.F.R. §22.15, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Complaint, at the following address:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. Pursuant to the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

Geraldine Gardner, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Clinton Building South
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Washington, D.C. 20460
Telephone: (202) 564-4032
E-mail: gardner.geraldine@epa.gov

IV. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement, signed by EPA and Respondent. The terms and conditions specified in the Consent Agreement are binding upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. *See* 40 C.F.R. § 22.8.

V. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, Respondent may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "SACO AEI Polymers," Penalty Docket No. "TSCA-HQ-2019-5005," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2019-5005
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of SACO AEI Polymers, Penalty Docket No. "TSCA-HQ-2019-5005" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency". A copy of the wire transfer should also be sent to the Cincinnati Finance Center.

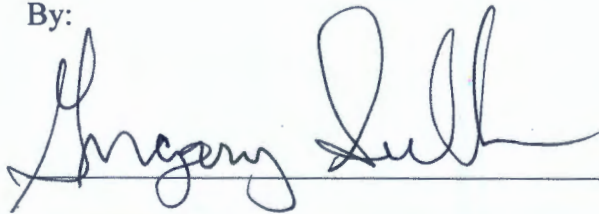
A copy of the check or other instrument of payment must be sent to the attorney of record assigned to represent EPA in this matter.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2019-5005

In the Matter of: SACO AEI Polymers

By:

A handwritten signature in black ink, appearing to read "Gregory Sullivan", written over a horizontal line.

Date:

A handwritten date "9/26/19" in black ink, written over a horizontal line.

Gregory Sullivan, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

ATTACHMENT

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.

CERTIFICATION

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2019-5005, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Ms. Sarah A. Slack
Foley & Lardner LLP
150 East Gilman Street
Suite 5000
Madison, WI 53703-1482



Brian T. Dyer, Case Development Officer
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency (Mail Code 2249A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

SEP 27 2019

Date